

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
SUNGARD AVAILABILITY SERVICES LP**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and SunGard Availability Services LP, hereinafter referred to as the "Contractor," is for the provision of Print Services Disaster Recovery Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Partnership.

Contractor Place of Incorporation or Organization: Pennsylvania

Contractor Edison Registration ID # 0000013371

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract and its incorporated documents (Contract Section E.8).

a. Definitions.

- i. Print Services Recovery Center – a commercial disaster recovery print facility that provides the space and equipment required to provide Print Services Disaster Recovery Services, such that the State can conduct disaster recovery testing for Information Technology (IT) print operations or continue IT print operations in the event of a Print Services Disaster.
- ii. Infrastructure Disaster – a disaster affecting the State's processing capabilities.
- iii. Print Services Disaster – a disaster affecting the State's printing capabilities.
- iv. Disaster Recovery Environment (a.k.a. Environment) – a particular State computing environment, which comprises common equipment (e.g. Mainframe Environment) or exists to serve a State program area (e.g. TennCare Environment).
- v. Print Services Disaster Recovery Services – all services described in Contract Section A, Scope of Services.

A.2. The Contractor shall provide recovery services for two types of disaster declarations - Infrastructure Disaster declaration and Print Services Disaster declaration. Depending upon the circumstances, these declarations may be declared at different times or at the same time. Infrastructure Disaster Recovery Services will be provided under a separate contract and is not addressed in this Contract. This dual-contract approach notwithstanding, the Contractor shall insure adequate coordination between the services of the two contracts, such that Infrastructure Disaster Recovery Services and Print Services Disaster Recovery Services are performed in a seamless and efficient manner. The State's Office for Information Resources will declare a Print Services Disaster declaration when service delivery capabilities for the State's printing facilities are interrupted. The need for print services may originate from systems running at the Contractor Recovery Center(s) providing Infrastructure Disaster Recovery Services to the State and/or from systems running at State facilities on the State's network. The Contractor will provide the State with access to a Print Services Recovery Center within 24 hours of Print Services Disaster declaration.

A.3. The Contractor will provide Print Services for both Advanced Function Presentation (AFP), Metacode and PostScript format. The Contractor will produce laser image Magnetic Ink Character Recognition (MICR) / non MICR cut sheet output. As a minimum, all continuous feed printers, utilized for State Print Services Disaster Recovery Services at the Print Services Recovery Center,

should be able to accept both Advanced Function Presentation Data Stream (AFPDS) and Intelligent Print Data Stream (IPDS) type data streams. All cut-sheet printers should be able to accept Printer Control Language (PCL), AFPDS, IPDS, PostScript, Portable Document Format (PDF), and Xerox Metacode type data streams.

- A.4. The Contractor will provide and maintain a minimum of one (1) Print Services Recovery Center from which the Print Services may be provided for a period of up to three hundred sixty-five (365) consecutive days following a Print Services Disaster declaration by the State. The Print Services Recovery Center must be at least one hundred (100) miles from Nashville, Tennessee.
- A.5. The Print Services Recovery Center must be accessible from the Contractor Recovery Center(s) providing Infrastructure Disaster Recovery Services to the State. The Contractor is responsible for all connectivity between the Contractor Recovery Center(s) and the Print Services Recovery Center; such connectivity must be secure and approved by the State.
- A.6. The Print Services Recovery Center must be accessible from the State's network, and provide real-time printing to the State's network. The Contractor is responsible for the connection between the Print Services Recovery Center and the State's network, which may be provided via site-to-site virtual private network (VPN) connection thru the Internet or from a direct circuit connection, minimum speed of T1; such connection shall be approved by the State and located at a State data center, either in Nashville or Smyrna, Tennessee, designated by the State. Unless the State agrees otherwise, the connection must be independent of the required connection in the Infrastructure Disaster Recovery Services Contract. The Contractor must provide the connectivity equipment (hardware and/or software) required at the Print Services Recovery Center to receive print files from the State's network, including the direct circuit connection, if such connection is used. The State will provide the connectivity equipment (hardware and/or software) required at the State, excluding the direct circuit connection. All costs associated with connectivity must be included in the monthly Print Recovery Services Subscription Fee. The State will not pay separate fees for Print Services Recovery Center connectivity.
- A.7. The Contractor will provide a maximum of two (2) Print Services Disaster Recovery Services tests per Contract year. Such testing shall occur on a continuous, round-the-clock basis. The State will schedule tests a minimum of sixty (60) days prior to the testing and at a time that is mutually agreeable to the Contractor and the State; the tests will likely coincide with the disaster recovery testing of an Environment covered by the Infrastructure Disaster Recovery Services Contract, but such scheduling is not required. The Print Services Recovery Center must be simultaneously available from both the Contractor Recovery Center providing Infrastructure Disaster Recovery Services to the State and the State's network during Print Services Disaster Recovery Services testing. Print Services Recovery Center usage and Print Production Services supplied during Print Services Disaster Recovery Services testing must be included in the monthly Print Services Disaster Recovery Services Subscription Fee. Print Production Services during Print Services Disaster Recovery Services testing will be limited to eight thousand (8000) print items per test. The State will compensate the Contractor for shipping sample print items, in accordance with Contract Section C.3.d, if such shipping is requested by the State.
- A.8. The State will compensate the Contractor for Print Services Disaster Recovery Services in accordance with Contract Section C.3.

B. CONTRACT PERIOD:

- B.1. Contract Term. This Contract shall be effective for the period beginning August 1, 2012, and ending on July 31, 2015 (the "Contract Term"). The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract Term of no more than five (5) years, provided that such an extension of the Contract Term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension

necessitates additional funding beyond that which was included in the original Contract, an increase of the State's Maximum Liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

- B.3. Declared Disaster Term Extension. If the State declares a Print Services Disaster and the Contract Term would otherwise expire during the time required to recover from that Print Services Disaster, the State, at its discretion, may automatically extend the existing Print Services Disaster Recovery Services under the Contract for an additional period or periods of time, not to exceed one (1) year, at the same rates as the final contract year.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the Maximum Liability of the State under this Contract exceed Three Hundred Seventy-Eight Thousand Dollars (\$378,000.00) [the "Maximum Liability"]. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the Maximum Liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The Maximum Liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated on a monthly basis for said units, milestones, or increments of service based upon the payment rates detailed in Contract Attachment B, Print Services Catalog during Disaster testing or a Disaster event. The Print Services rates in Attachment B must include all labor, equipment and materials costs, with the exception of check stock and pre-printed forms, to produce the print. The State will provide check stock and pre-printed forms to the Contractor at no cost to the Contractor. No other compensation for print production will be paid to the Contractor.
- c. The State will compensate the Contractor for print delivery during a Disaster event as follows:
 - i) Bulk Shipping: The Contractor will label, package and ship print to an address designated by the State at the time of the Disaster. The Contractor is responsible for providing the labor, equipment and materials required to prepare the print for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
 - ii) Postal Mail: The Contractor will fold, insert into envelopes and mail forms/letters to the addressee printed on the form/letter at the time of a Disaster. The Contractor is

responsible for providing the labor, equipment and materials required to prepare the forms/letters for mailing. The State will pay the postage directly or reimburse the Contractor for the actual postage charges.

- d. The State will compensate the Contractor for print delivery during Disaster testing as follows:
 - i) Bulk Shipping: The State may request the Contractor to ship samples of print or enveloped forms/letters produced during a Test. The Contractor will label, package and ship the samples to the address designated by the State. The Contractor is responsible for providing the labor, equipment and materials required to prepare the samples for shipping. The State will pay the shipping company charges directly or reimburse the Contractor for the actual shipping company charges.
- e. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Tricia Kitchens, Chief Technology Officer
State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave, 16th Floor
Nashville, TN 37243
Telephone: (615) 741-7122

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Finance and Administration; Office for Information Resources
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

The State's Office for Information Resources will provide draft versions of amendments to the Comptroller's Office for their review and approval prior to the amendments being submitted to the Contractor for signature.

- D.3. Termination for Convenience. After six (6) months from the beginning of the Contract, the State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State, which shall not be unreasonably withheld. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds

of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract as required by law.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jimmy Simerly
State of Tennessee – OIR
Snodgrass TN Tower
312 Rosa L Parks Ave, 17th Floor
Nashville, TN 37243
Jimmy.Simerly@tn.gov
Telephone: (615) 532-1781
FAX: (615) 741-6164

The Contractor:

SunGard Availability Services LP
680 East Swedesford Road
Wayne, PA 19087
contract.admin@sungard.com
Telephone # (484) 582-2000
FAX # (610) 225-1125

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3

accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

The State will maintain the confidentiality of material and information provided to it by Contractor according to the terms required of the Contractor under this section E.6. This confidentiality requirement does not apply to the contract or any amendments or incorporated documents, billing

and payment information, or any other information that the State is required to disclose under the Tennessee Public Records Act, Tennessee Code Annotated section 10-7-503 et seq.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all HIPAA requirements applicable to the Contractor in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through f., below);
 - b. any addenda to this Contract;
 - c. any clarifications to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's proposal seeking this Contract.
- E.9. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.10. Partial Takeover. After six (6) months from the beginning of the Contract, the State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed

a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.11. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. If such disclosure was due to Contractor's breach of contract or negligence, Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. If such disclosure was due to Contractor's breach of contract or negligence, Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.12. Assignment of Disaster Recovery Services. The Department of Finance and Administration reserves the right to assign some or all of the services required by this contract to another State of Tennessee department. In the event that the State determines that such assignment is necessary or desirable, the assignment will be effected by: (1) an amendment to this Contract and/or (2) a separate contract. The Contractor shall not unreasonably contest the assignment or withhold signature.
- E.13. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
 - partial performance of any term or provision of the Contract;
 - any act prohibited or restricted by the Contract, or
 - violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach." The State may declare a partial default under subsection (a)(2) or terminate the contract for cause under subsection (a)(3) or Section D.4 only if the Contractor has committed a material breach of the contract. A material breach is of such magnitude that it deprives the State of the benefits expected under the contract. In the circumstances of this contract, this could include, but is not limited to, failure to provide print services that are accessible to the State's network in the event of a Print Services Disaster.

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of actual damages and any other remedy available at law or equity.
- (2) Partial default— In the event of a Breach, the State may declare a partial default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a partial default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the

Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

Upon partial default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a partial default is taken.

- (3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.14. The State shall pay Contractor's invoices according to the Prompt Pay Act of 1985, Tennessee Code Annotated Sections 12-4-701 through 12-4-707.

IN WITNESS WHEREOF,

SUNGARD AVAILABILITY SERVICES LP:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

MARK A. EMKES, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	SUNGARD AVAILABILITY SERVICES LP
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	23-2106195

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

CONTRACT ATTACHMENT B**Print Services Disaster Recovery Services Catalog**

Print Services Item	Unit	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Monthly Services						
Print Recovery Services Subscription Fee	Per Month	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00	\$ 10,500.00
Print Production Services						
Print MICR Checks 8 ½" X 11"	Per 1000 items	\$ 35.04	\$ 35.04	\$ 35.04	\$ 35.04	\$ 35.04
Print Simplex/Duplex Pages	Per 1000 items	\$ 30.02	\$ 30.02	\$ 30.02	\$ 30.02	\$ 30.02
Print Continuous Forms Simplex/Duplex	Per 1000 items	\$ 20.02	\$ 20.02	\$ 20.02	\$ 20.02	\$ 20.02
Fold, Insert, and Prepare to Mail Forms/Letters	Per 1000 envelopes	\$ 30.00	\$ 30.00	\$ 30.00	\$ 30.00	\$ 30.00
Label, Package and Prepare to Ship Print Items including pages, forms, and/or envelopes	Per 1000 Print Items	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00
Disaster Event Services						
Print Services Declaration Fee	Per Incident	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Print Services Alert Fee	Per Incident	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00

RECOVERY SERVICES

A. **RECOVERY SERVICES.** The Contract specifies a State Location ("Location") (901 5th Ave N. Nashville, TN), the recovery services to be provided by Contractor to the State for that Location ("Recovery Services"), the fees to be paid by the State to Contractor for those services, and any other applicable terms.

1. **DISASTER.** A "Disaster" is any unplanned event or condition that renders The State unable to use a Location or the equipment situated there for its intended computer processing and related purposes. By signing the Contract, The State warrants that the Location specified in the Contract is not at that time experiencing a Disaster. The State may declare a Disaster by having one of its designated representatives give notice to Contractor stating that a Disaster occurred, identifying the affected Location, and specifying which Recovery Services The State believes will be required. Contractor will then follow The State's reasonable declaration procedures as provided to Contractor in the Disaster Declaration Authority form.
2. **SELECTED SERVICES.** Whenever The State declares a Disaster, the Recovery Services to be provided by Contractor to The State shall be the following services as selected by The State at the State's sole discretion:
 - (a) **Center-Based Recovery Services.** Immediate and exclusive use of the services described below ("Center-Based Recovery Services"), which The State may use during the period of time stated below, provided at a Contractor facility:
 - (i) **Hotsite.** An installed, fully operational computer system and networking capability ("Hotsite"), equal to or better than (in all material respects including equipment quality and processing capacity) the Hotsite Configuration described in the Contract, which The State may use for three hundred sixty-five (365) days.
 - (b) **Network Services.** Use, within two (2) hours after Contractor receives the Disaster declaration notice, of the network services described below ("Network Services"), which The State may use for six (6) weeks:
 - (i) **Center to Center.** On-demand connectivity among Contractor recovery centers using the Contractor Global Network ("SGN") in accordance with the network connectivity described in the Contract.
 - (ii) **Dedicated Circuit.** Dedicated connectivity between The State location described in the Schedule and the Contractor facility or SGN POP (point of presence) described in the Schedule, using a dedicated circuit that is procured and installed by Contractor.
 - (iii) **IP ReDirect Services.** On-demand, point-to-point or point-to-multipoint, Internet Protocol (IP) connectivity between the IP-enabled SGN POP where The State is accessing the SGN and the IP-enabled Contractor facility described in the Schedule, with such connectivity delivered using a single Ethernet interface directly attached to a router at the The State Location.
 - (iv) **Web ReDirect Services.** On-demand access to the Internet from the Contractor facility described in the Schedule, using any of the multiple Internet service providers under contract with Contractor (which may require The State to set up domains to use the Web ReDirect Services).
 - (v) **MetroBandwidth.** On-demand access to transport infrastructure connecting two Contractor service areas within the same building or between two service areas located in separate buildings within the same metropolitan area as described in the Schedule.
 - (vi) **Telephone Line.** Analog line available for use in conjunction with

- a Dedicated Cabinet or Shelf contracted for by The State at the Contractor facility.
3. **EXTENDED USE.** During a Disaster, The State may continue to use the Center-Based Recovery Services or the Network Services beyond the periods stated in Contract Section A.4, provided that this extended use shall be subject to immediate termination if and when any other customer declares a disaster and requires use of the Recovery Resources then being utilized by The State.
4. **COMPREHENSIVE DISASTER RECOVERY SUPPORT.** Whenever The State uses Recovery Services during a Disaster, Contractor's Support Staff (consisting of operations, communications, security, transportation, systems software and customer support personnel, as appropriate) shall provide comprehensive support to The State on a 24-hour-a-day, 7-day-a-week basis, as needed.
5. **TESTS.** Promptly after execution of the Contract and at no additional cost to the State, Contractor shall either notify The State of available times to schedule a training workshop at a Contractor facility or provide instructions to The State to conduct a computer based training workshop. The State may use certain Recovery Services to test its disaster recovery capability ("Test") in accordance with Contract Section A.7. During each Test, Contractor's Support Staff shall provide reasonable supplies and support to The State as needed, subject to availability. In order for Contractor to provide support to The State for a scheduled Test, all Test plans must be provided to Contractor at least three (3) weeks prior to the Test date. Upon receipt of The State's Test plan, Contractor will then assign a Contractor technical coordinator to review The State's Test plan and coordinate Test support activities. Test time is available on a 24-hour-a-day, 7-day-a-week basis. All Tests shall be subject to immediate cancellation or termination by Contractor, and shall be rescheduled as soon as possible, if and when any other customer declares a disaster and requests use of the Recovery Services being tested.
6. **E-TESTING PROGRAM.** The State may, at its option, elect to participate in Contractor's E-Testing Program. The E-Testing Program is a web-based service designed by Contractor to facilitate efficiency of pretest communications, by allowing The State to complete and submit Test plans online for any scheduled Test. The State shall use the E-Testing Program only for its own internal purposes in testing certain Recovery Services with Contractor. Periodically, in its sole discretion, Contractor may change or discontinue the E-Testing Program. Contractor shall not be liable for any damages incurred by The State as a result of The State's access to, use of, or retrieval of The State's Test plans, including damages caused by any viruses. Contractor represents that it shall not knowingly code or introduce any virus or other disabling code into the systems used to provide the E-Testing Program or The State's Test plan. Contractor shall use commercially reasonable efforts to assist The State, at no charge, in mitigating the effects of any virus that is coded or introduced into the system.
7. **TEST SERVICES.** Contractor's testing services are designed to provide reliable and repeatable Test services for operating system, application and data restorations ("Test Services") while The State is using the Recovery Services for a Test. Whenever The State schedules a Test of the Recovery Services, the Test Services provided by Contractor to The State shall be in accordance with Contract Section A.7.
8. **SOFTWARE.** All systems and utility software which Contractor has installed on the equipment used to provide the Recovery Services may be used by The State during a Disaster or a Test.
9. **ACCOUNT EXECUTIVE.** Contractor shall assign an Account Executive to The State to assist in monitoring the continued viability of The State's disaster recovery capability and to facilitate ongoing communications between The State and Contractor.
10. **HOTLINE.** Contractor shall maintain a toll-free customer support telephone service, on a 24-hour-a-day, 7-day-a-week basis, which The State may use as needed.
11. **USER GUIDE.** The State shall receive on-line access to Contractor's current User Guide for the Recovery Services and all

applicable updates and revisions, as and when issued. Access is available at <http://www.mysungard.com>.

B. MAINTENANCE AND USE OF RECOVERY RESOURCES. The terms of this Section B are intended to ensure that the facilities, equipment, network and other resources used by Contractor to provide the Recovery Services ("Recovery Resources") are properly maintained and used, and to protect the respective interests of the parties in using the Recovery Resources.

1. **MAINTENANCE.** Contractor shall maintain vendor-specified proper operating environments at its facilities and in its vehicles used to provide the Recovery Services. Contractor shall adhere to vendor-recommended procedures and policies for proper maintenance of the Recovery Resources, including necessary remedial maintenance and regularly scheduled preventive maintenance. **Contractor warrants to The State that the Recovery Resources shall be maintained in a state of readiness at all times, consistent with Contractor's obligations under the Contract.**
2. **AUDITS.** At any time except when the Recovery Resources are being used during a disaster or a confidential test, The State may, at its expense, audit the Recovery Resources to verify Contractor's compliance with the Contract. Contractor also shall permit any regulatory authority having jurisdiction over The State to inspect the Recovery Resources. Contractor shall, at its expense, have the Recovery Resources annually reviewed by an independent third-party auditor, whose reports shall be furnished to The State upon request.
3. **STANDARD PROCEDURES.** Contractor shall maintain reasonable and uniform policies regarding security, safety, operations and other procedures for accessing and using the Recovery Resources during disasters and tests. In the case of network resources, these policies ("Network Policies") incorporate the policies, rules and regulations of Contractor's underlying network and Internet service providers. All of these policies are included in Contractor's on-line User Guide and in other written documents provided by Contractor to its The States from time to time. To the extent that these policies do not conflict with the terms of the Contract, both Contractor and The State shall comply with these policies in all material respects and shall use all Recovery Resources in accordance with manufacturer specifications.
4. **SPECIAL PROCEDURES.** If The State gives written notice to Contractor describing any special data protection or other security procedures beyond those described in the Contract, used by The State, then Contractor shall use commercially reasonable efforts to help implement those procedures whenever The State is using the Recovery Resources. The State shall be responsible for any additional expenses reasonably incurred by Contractor in implementing The State's special procedures. Such expenses not covered by rates specified in the Contract shall require amendment in accordance with Contract Section D.2. The State is responsible for the encryption of The State data when utilizing any Recovery Resources.
5. **NETWORK RESOURCES.** Contractor shall privately manage the SGN as a protocol-independent, multi-layer network. After The State has been switched onto the SGN, the applicable Network Services will be available on a 24-hour-a-day, 7-day-a-week basis excluding downtime attributable to routine and preventative maintenance. The Network Services are provided subject to the availability of the necessary services by Contractor's underlying network and Internet service providers.

C. MULTIPLE DISASTER. The State's rights of immediate and exclusive use of the Recovery Services, as provided in the Contract, shall be subject to the possibility that one or more other customers ("other affected customers") could declare a disaster at the same time as (or before or after) The State and require use of the same Recovery Resources at the same time as The State ("Multiple Disaster"). The

following provisions are intended to avoid or minimize contention for Recovery Resources during Multiple Disasters.

1. **PRIORITY RESOURCES AND SHARED RESOURCES.** All Recovery Resources shall be available on a priority use basis ("Priority Resources") except for those designated by Contractor as available on a shared use basis ("Shared Resources"). Contractor's designations of Shared Resources shall be made in its reasonable discretion and shall be subject to change without notice.
2. **ACCESS AND USE PROCEDURES.** Access to and use of Recovery Resources during disasters shall depend upon whether the Recovery Resources are Priority Resources or Shared Resources and, with respect to Priority Resources, the order in which disasters are declared. Contractor shall maintain records of its receipt of disaster declarations, which shall be the exclusive basis for determining the order in which disasters are declared. The State will make a Disaster declaration in the form of a phone call. The Contractor will log all phone calls of Disaster declarations to determine the order in which disasters are declared by its customers. The Contractor shall acknowledge receipt of The State's Disaster declaration by issuance of a Disaster Declaration Authority form to The State.
 - (a) The State shall have priority rights of access to and use of applicable Priority Resources that are not then being used by other affected customers who previously declared disasters. Use of such Priority Resources is exclusive for as long as The State is entitled to use them under the Contract.
 - (b) The State and all other affected customers shall have equal rights of access to and use of applicable Shared Resources, irrespective of the order in which disasters occur or are declared. Use of Shared Resources may be exclusive at times, but remains subject to the possible need for shared or allocated use with other affected customers. In an effort to avoid the need for shared or allocated use of any Shared Resources, Contractor shall, to the fullest extent possible under the circumstances, take full advantage of, and provide access to, all of its other available Shared Resources.
 - (c) If applicable Priority Resources and applicable Shared Resources are both available, The State may choose which type to use.
 - (d) The State shall cooperate with Contractor and all other affected customers as reasonably required under the circumstances, including to coordinate the efficient use of Recovery Resources, to avoid or minimize the need for shared or allocated use of Shared Resources, and to implement any necessary plans for shared or allocated use of Shared Resources.
 - (e) If a Multiple Disaster is widespread or extreme, then, notwithstanding the foregoing provisions, Contractor may implement emergency procedures that are necessary, in Contractor's reasonable judgment, to allocate Recovery Resources in order to address applicable national interests and comparable concerns.
3. **MULTIPLE DISASTER PROTECTION.** To lower the probability of a Multiple Disaster, Contractor shall comply with the following terms:
 - (a) No other customer shall be granted any greater rights of access to or use of the Recovery Resources than are granted to The State under the Contract.
 - (b) No agreement to provide use of any Recovery Resources shall be entered into at a time when the customer location to be serviced is then currently experiencing a disaster.

Contractor also shall comply with the following:

 - (c) To discourage unnecessary disaster declarations, Disaster Event Services fees, as provided in Contract Attachment B, shall be charged whenever a customer declares a disaster.
4. **CRISIS MANAGEMENT.** Whenever Contractor learns of an approaching storm or other situation that might cause a Multiple Disaster, Contractor shall monitor the situation and use commercially reasonable efforts to coordinate contingency plans with all potentially affected customers.

OUTPUT RECOVERY SERVICES

A. SET UP AND STATE RESPONSIBILITIES.

1. **SET UP.** Within 45 days of execution of the Contract, the State and the Contractor shall develop a written statement setting forth the print and mailing process ("Process Statement"). The Process Statement will include:
 - (a) a sample of the State's Data to be provided to the Contractor for processing under this Contract, in the media to be used by the State. The Contractor shall write the necessary interfaces to migrate the State's Data for Print Services.
 - (b) The State's selection of a form of statement or letter for its mailings to include stock and envelopes ("State Format"). The Contractor shall provide the State with a mock-up of the selected State Format and the State must provide written approval of the State's selected State Format prior to implementation. The State acknowledges that the Contractor shall have no obligation to commence providing services until receipt of such approval.
 - (c) a written statement detailing how the State Data is to be processed for mailing;
 - (d) The State's appointed contacts who can declare a disaster on the State's behalf;
 - (e) Locations, transmission methods, network routing, etc. that the State may send data from if using their primary or disaster recovery data center; and
 - (f) The State's monthly/quarterly normal mailing schedule (including volume).
2. **State Responsibilities.** The State shall supply to the Contractor all of the data and information ("State Data") as described in the Contract to be processed by the Output Recovery Services. The State shall transmit the State Data to the Contractor by Internet, telecommunications link, magnetic tapes or diskette delivered postage prepaid and which are machine-readable by the Contractor's hardware without translation, alteration or modification, or in another manner acceptable to the Contractor. The State shall maintain copies of all source State Data and current backup copies of all State Data supplied to the Contractor. The State is responsible for the accuracy, reliability and adequacy of all State Data and other information submitted by or on behalf of the State for processing and the resulting output therefrom.

The Contractor shall have no liability for its failure to perform its obligations pertaining to Output Recovery Services in a timely manner or for any loss or damage to the extent that such loss or damage results from any of the following: (i) State changes type or method of State's media for sending State Data to the Contractor or changes its media data encoding techniques, and fails to provide sufficient advance notice; (ii) malfunctions in State's software or hardware; (iii) incorrect, incomplete, inaccurate or non-machineable State Data received from the State, including addresses not matching the national United States Postal Service ("USPS") files; (iv) State-supplied Materials do not meet machine, printing or mailing specifications or were not provided in sufficient quantities; (v) failure of USPS or other third party carriers to accept mail; (vi) requests for custom programming without sufficient advance notification; or (vii) State's failure to maintain copies of the State Data.

3. **SERVICE WARRANTY.** The Contractor warrants that the Contractor will use reasonable care in processing all State Data and following the Process Statement. The Contractor shall have no liability under this Service Warranty unless, within thirty (30) days after the applicable date of service, the Contractor receives notice from State describing a material processing error caused by the Contractor's failure to use reasonable care, together with adequate supporting documentation and data. Upon receipt of any such notice, the Contractor's only obligation under this Service Warranty is to correct the error and redo the work affected as soon as reasonably practical, or at the Contractor's

option, to refund or credit the charges applicable to the work affected. State is responsible for auditing processing results. Notwithstanding the foregoing, any limitation of liability or warranty is subject to Contract Section E.9.

4. **MEDIA WARRANTY.** The Contractor will use commercially reasonable care in handling media provided by State which are in the Contractor's possession and on which are encoded data belonging to State. The Contractor's sole obligation under this Media Warranty is to replace or repair any tape lost or damaged as a result of the Contractor's failure to use commercially reasonable care, and to the extent possible, to regenerate any lost data from backup files maintained by the Contractor or from source data provided by State. Notwithstanding the foregoing, any limitation of liability or warranty is subject to Contract Section E.9.